Supreme Court, U. S.
FILED
JAN 29 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

No. 79-1019

JOHN M. RANEY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTARY APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Unpublished Per Curiam Order
United States Court of Appeals
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

October 31, 1979

Before

Hon. LATHAM CASTLE, Senior Circuit Judge
Hon. WILBUR F. PELL, JR., Circuit Judge
Hon. PHILIP W. TONE, Circuit Judge

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JOHN M. RANEY, Defendant-Appellant.	Appeal from the United States District Court for the Southern District of Illinois, Springfield Division, No. 78-Cr-30028, J. WALDO ACKERMAN, Judge

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Illinois, Springfield Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, in accordance with the order of this court entered this date.

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Argued October 24, 1979

October 31, 1979

Before

Hon. LATHAM CASTLE, Senior Circuit Judge
Hon. WILBUR F. PELL, JR., Circuit Judge
Hon. PHILIP W. TONE, Circuit Judge

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JOHN M. RANEY, Defendant-Appellant.	) Appeal from the United States District Court for the Central District of Illinois, Springfield Division. No. 78-30028 J. Waldo Ackerman, Judge.

ORDER

The defendant, John M. Raney, appeals from the judgment of conviction entered after a jury verdict of guilt on twenty-seven counts of mail fraud, ten counts of wire fraud, two counts of bankruptcy fraud, and one count of conspiracy to commit these offenses.

The defendant has raised several arguments on appeal, none of which merits lengthy discussion. The defendant urged most vigorously at oral argument that the evidence of guilt of conspiracy and of the substantive fraud counts was insufficient. In making this argument, the defendant has taken a precarious view of the evidence: on the conspiracy count, the defendant has argued that the chief witness Van Diver's testimony may implicate the defendant but does not show the necessary element of Van Diver's agreement to become a member of the conspiracy. The Government has presented compelling evidence that the defendant was willingly assisted by Van Diver in a scheme to defraud the purchasers of the farm buildings. Both the defendant and Van Diver, for example, sold buildings before forming the corporation. Furthermore, although they put no money into the business, they did take salaries and other expenses during its operation. Van Diver worked with the defendant on a worthless erection manual to placate unsatisfied customers. Both Van Diver and the defendant urged an employee to make partial deliveries to customers to get more money and to make the deliveries at night so the customers could not see what they were getting. As to the fraud counts, the defendant

urges us to view the evidence in an altogether different light: according to the defendant, he and Van Diver were business novices whose conduct was foolish, but not criminal. We are satisfied that the evidence, viewed in the light most favorable to the Government, Glasser v. United States, 315 U.S. 60, 80 (1942), supports the jury's finding that the defendant did enter an illegal agreement with Van Diver and that the fate of the defendant's business venture was the product of fraudulent practices. Furthermore, we do not see any fatal inconsistency in the jury's failure to convict on some of the counts. It is settled that the jury may convict on some counts and acquit on other closely related counts. Dunn v. United States, 284 U.S. 390, 394 (1932). This court will not speculate on the reasons for such action. United States v. Elders, 569 F.2d 1020 (7th Cir. 1978).

The defendant's allegation that the evidence against him at trial was the product of his privileged bankruptcy testimony is completely

unfounded, as is demonstrated by the November 28, 1978, hearing during which the Government established the lack of opportunity to make any use of the bankruptcy testimony.

The trial court's restriction of cross-examination of Van Diver and Hollis on their subsequent operation of similar businesses was within the court's discretion to prevent questioning that infringes the witnesses' rights against self-incrimination, see United States v. Varelli, 407 F.2d 735, 751 (7th Cir. 1969), cert. denied , 405 U.S. 1040 (1972), and to prevent the trial from becoming a collateral prosecution of the witnesses instead of the defendant. See United States v. Estell, 539 F.2d 697 (10th Cir. 1976), cert. denied 429 U.S. 982.

Finally, the defendant's sentence was within the limits set by statute. The mere showing that his codefendant pled guilty and received a lighter sentence does not raise any question of gross abuse in the sentencing process, particularly in light of the district court's reasons, stated on the

record, for imposing the particular sentence on the defendant. See United States v. Santiago, 582 F.2d 1128, 1187 (7th Cir. 1978) United States v. Cardi, 519 F.2d 309, 315 (7th Cir. 1975).

We have considered the defendant's numerous other arguments and hold them to be without merit. In accordance with our ruling from the bench after hearing oral argument, the judgment of the district court is affirmed.

SUPREME COURT OF THE UNITED STATES

No. A-459

JOHN M. RANEY,

Petitioner,

v.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including December 30, 1979.

/s/ John Paul Stevens
Associate Justice of the
Supreme Court of the
United States

Dated this 29th
day of November, 1979.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. JOHN M. RANEY and GERALD R. VAN DIVER, Defendants.	)	NO. 78-30028

MOTION FOR MISTRIAL

Now comes John M. Raney, Defendant in the above styled case, by and through appointed counsel, Jon Gray Noll, and moves this Honorable Court to declare a mistrial in the above styled case.

In support thereof, Mr. Raney submits the following:

1. State Journal Register article dated January 16, 1979, a copy of which is attached as Exhibit 1.

2. State Journal Register article dated January 17, 1979, a copy of which is attached as Exhibit 2.

3. State Journal Register article dated January 18, 1979, a copy of which is attached as Exhibit 3.

APPENDIX C

4. Defendant submits as an offer of proof that the local news, radio, and television media have broadcast information concerning the above styled proceeding substantially similiar to that information which appears in the news articles, Exhibits 1, 2 and 3.

The Defendant submits that this adverse and widespread news publicity has prejudicially affected his defense of the case. It should be noted that one of the basic arguments throughout the case has been the presentation of Mr. Van Diver's plea of guilty. The newspaper articles and radio and television broadcast have set out the terms of Mr. Van Diver's guilty plea. It is the Defendant's contention that Mr. Van Diver's plea of guilty will be imputed to him.

Further, the Defendant requests this Honorable Court to question the respective jurors individually on their knowledge concerning the pre-trial and trial publicity in this case.

In the alternative, Defendant moves that this Honorable Court enter an order requiring all news,

radio and television media to cease further broadcasts and coverage of this proceeding until a verdict has been returned.

JOHN M. RANEY, Defendant

By /s/ Jon Gray Noll
Jon Gray Noll, his attorney

Jon Gray Noll
Attorney for Defendant
608 Ridgely Building
Springfield, Illinois 62701
Telephone: 544-8441

PROOF OF SERVICE

The undersigned hereby certifies that he deposited copies of the foregoing instrument in the U.S. Post Office Box in Springfield, Illinois, with postage fully prepaid and by first class mail, plainly addressed to:

Mr. Thomas W. Turner
Federal Building
Springfield, Illinois 62701

on this 18th day of January, 1979.

/s/ Jon Gray Noll

EXHIBIT #1
Page 8 The State Journal-Register, Springfield, Tuesday, January 16, 1979.

BUILDING SCHEME TRIAL MAY
USE PARTNER AS KEY WITNESS

The key witness in the trial concerning a steel building sham beginning this week may be Gerald R. Van Diver, 30, who reportedly will testify for the government against his former partner.

Jury selection in U.S. District Court began Monday and will be completed today.

John M. Raney, 33,formerly of Springfield, faces trial on 61 charges for allegedly selling 120 farmers and small businessmen steel buildings that never materialized.

His associate, Van Diver, also formerly of Springfield, pleaded guilty Dec. 13 to one count of conspiracy and one count of mail fraud and will be sentenced Feb. 2 to one year in jail and five years probation following a negotiated plea with U.S. Attorney Gerald Fines.

Fifty-six of the 58 counts returned in the indictment against Van Diver, now of Festus, Mo.,

will be dismissed at the sentencing.

Raney, of Orlando, Fla., is charged with 43 counts of mail fraud, 13 counts of wire fraud, four counts of bankruptcy fraud and one count of conspiracy.

The scheme netted the two $300,000 from victims in eight states.

Raney and Van Diver did business from March to September in 1977 as the Illinois Construction Company and Farm Belt Steel Corporation with offices at 504-520 E. Monroe St., authorities said.

Their customers were from Illinois, Iowa, Missouri, Tennessee, Mississippi, Alabama, Arkansas and Nebraska.

The duo allegedly sold steel buildings cheaply, beating the competition but knowing they could not deliver the goods, according to the indictments.

The buyers made down payments between $2,000 and $3,000 without ever receiving the complete materials for the buildings, the indictment charges.

Authorities believe the trial may last between

two and three weeks.

Tom Turner, first assistant U.S. Attorney, is representing the government with assistance from Ellen Schanzle-Haskins, assistant U.S. Attorney, and Linda Pence, who is with the fraud division of the U.S. Department of Justice.

Raney's legal counsel is John Gray Noll.

Turner said he could not comment on whether they have ever offered Raney a negotiated plea.

EXHIBIT #2
Page 23 The State Journal Register, Springfield, Wednesday, January 17, 1979.

ACCUSED SWINDLER SAID "IT'S EASY TO FOOL A FARMER; JURY TOLD

John M. Raney, who is on trial in U.S. District Court this week for swindling 120 farmers and small businessmen, told one of his employees "it's easy to fool a farmer."

First Assistant U.S. Attorney, Tom Turner told jurors that Raney made that statement to Bernie Smith, who was hired by Raney during an alleged six-month steel building sham in 1977 that bilked $300,000 from victims in eight states, including Illinois.

In opening remarks to the jury Tuesday, Turner traced Raney's involvement in the scheme that led to his indictment on 61 charges for allegedly selling customers steel buildings that never materialized.

Raney, 33, formerly of Springfield and now of Orlando, Fla., is charged with 43 counts of mail fraud, 13 counts of wire fraud, four counts of bankruptcy fraud and one count of conspiracy.

His former partner, Gerald R. Van Diver, 30, Festus, Mo., has pleaded guilty to one count of conspiracy and one count of mail fraud for his participation in the scheme. Van Diver has agreed to testify for the government against Raney.

"The evidence will show," Turner told the court, "that Van Diver and Raney formed the partnership originally known as Illinois Construction Company and later incorporated as Farm Belt Steel Corporation.

"They sold approximately 120 buildings for sale and erection and six months later, only one building was fully erected, "Turner said.

"Others were partially erected but most customers didn't receive any (buildings) at all." Turner added.

Turner said the two men did not invest any money, consult an attorney or accountant or buy any equipment before starting their business.

They paid each other commissions after they received down payments for the buildings they

sold, but they did so before they delivered the products they advertised, Turner said.

Debra Johnson, a secretary for the corporation before it went bankrupt, testified Tuesday that her bosses, Van Diver and Raney, continued to draw weelky salaries of $1,000 despite facts that the business was doing poorly and they could not pay employee salaries.

"Mr. Raney conducted business as if it were a roaring success. It was for him-because he was getting paid $1,000 a week," Turner said.

The trial continues today and authorities expect it to continue for at least two weeks.

EXHIBIT #3
Page 3 The State Journal Register, Springfield, Thursday, January 18, 1979.

PARTNER IN ALLEGED SWINDLE SAYS HE OBJECTED TO TACTICS

Gerald Van Diver testified in federal court Wednesday that when he objected to his partner's business tactics during their 1977 steel building sham, his associate John M. Raney reportedly said, "This is the way to start a business."

"It's easier to use other people's money than to use your own," Raney, 33,told Van Diver, who testified that he disapproved of selling the buildings and promising construction before the men had either buildings to sell or a construction crew.

Van Diver, 30, formerly of Springfield and now of Festus, Mo., is the prosecution's prime witness in the case against Raney, who is charged with swindling $300,000 from residents in eight states, including Illinois.

Van Diver Wednesday testified that entrepreneur Raney, formerly of Springfield and now of Orlando, Fla., apparently conned him as well as 120 farmers

and small businessmen.

Raney was indicted on 61 charges: 43 counts of mail fraud, 13 counts of wire fraud, four counts of bankruptcy fraud and one count of conspiracy.

Van Diver was indicted on 58 counts returned in the same indictment. He pleaded guilty to one count of conspiracy and one count of mail fraud in a negotiated plea with the government that will get him a sentence of one year in prison and five years probation.

Van Diver testified that the men met when Van Diver had applied in St. Louis for a sales job with a steel building company.

Raney, who was sales supervisor for the company, hired Van Diver and about one month later asked him to work for a steel construction company that Raney planned to start.

Van Diver, who had worked as an advance man for President Gerald Ford in Missouri in the last presidential election, told the court he had no sales or construction experience before Raney hired him.

Raney told Van Diver he wanted to sell and erect steel buildings. Van Diver took the job and, before they quite the St. Louis company, they began attracting customers for their own enterprise, according to testimony.

They formed Illinois Construction Company and later incorporated as Farm Belt Steel Corporation with offices in Springfield.

According to Van Diver, the corporation was a company in name only. Although Van Diver did eventually try to fill the orders placed and paid for by customers, he did so without Raney's blessings or help, testimony indicated.

"We never had discussed about how much was needed to invest to get started," Van Diver told the jurors. "He (Raney) just told me he had enough to get started."

The two men never did invest any of their money when they sold the bogus buildings, Van Diver testified, although they did take weekly salaries as high as $1,000 from the down payments given to them.

The partners advertised in newspapers and brochures that they had pre-fabricated engineered steel buildings to sell. And they promised they would also erect the buildings they sold.

"Raney told them it was basically easy to erect quality buildings, and after quite a bit of pressure, they put down checks for the down payments, "Van Diver said.

Van Diver said he and Raney continued to solicit and accept down payments for buildings, although they could not produce the products they promised.

As time went on, however, Van Diver said he tried to make the company legitimate by ordering buildings from steel suppliers to fulfill some of the orders.

The corporation eventually put construction crews on the payroll, also, although customers said they were young and inexperienced.

The two bought an old garage in Mount Auburn and set up a mock factory with a welder, an acetylene torch and rented a fork lift that was returned after about one month of use.

Potential customers were invited to an open house at the factory, where parts for the steel buildings allegedly were being manufactured.

"We manufactured some columns for buildings but we never fabricated a full frame, "Van Diver said when questioned by Tom Turner, first assistant U.S. attorney.

"I told him (Raney), 'You lied to those people' (after making a sale). And then Raney made another sale after he promised he would not make any more sales without making more commitments for steel suppliers," Van Diver said.

Van Diver testified he was the bookkeeper when the corporation began, but when he demanded Raney account for his business expenses, Raney took the accounting duties away from him.

"He told me I was prying and it was none of my damn business. And then I was told by Raney he had hired a bookkeeper, Van Diver explained. But Raney never did, Van Diver said.

Van Diver will return to federal court today as a witness.